

under Part 74 of the rules (except as provided in § 74.783 of this chapter), nor to FM or TV stations seeking to modify an existing call sign only to the extent of adding or deleting an “-FM” or “-TV” suffix. The latter additions and deletions may be effective upon notification to the Commission.

(k) Unless subject to a pending transfer or assignment application, a change in call sign assignment will be made effective on the date specified in the telegram authorizing the change. In this regard, the applicant may include with its application a request for a specific effective date to take place within 45 days of the submission of its application for a call sign. Postponement of the effective date will be granted only in response to a timely request and for only the most compelling reasons.

(l) Four-letter combinations commencing with “W” or “K” which are assigned as call signs to ships or to other radio services are not available for assignment to broadcast stations, with or without the “-FM” or “-TV” suffix.

(m) Users of nonlicensed, low-power devices operating under Part 15 of the FCC rules may use whatever identification is currently desired, so long as propriety is observed and no confusion results with a station for which the FCC issues a license.

(n) Where a requested call sign, without the “-FM,” “-TV” or “-LP” suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, the applicant must obtain and submit with the application for the call sign the written consent of the licensee(s) of such stations.

[48 FR 57136, Dec. 28, 1983, as amended at 52 FR 5295, Feb. 20, 1987; 52 FR 43079, Nov. 9, 1987; 56 FR 64873, Dec. 12, 1991; 59 FR 31556, June 20, 1994]

§ 73.3555 Multiple ownership.

(a)(1) *Radio contour overlap rule.* No license for an AM or FM broadcasting station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the principal community contour of that station and the principal community contour of any other broadcasting station directly

or indirectly owned, operated, or controlled by the same party, except that such license may be granted in connection with a transfer or assignment from an existing party with such interests, or in the following circumstances:

(i) In a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

(ii) In a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(iii) In a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

(iv) In a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

(2) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.

(3) (i) Where the principal community contours of two radio stations overlap and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraph (a)(1) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(ii) Every time brokerage agreement of the type described in paragraph (a)(3)(i) of this section shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that

it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraph (a) of this section.

(4) For purposes of this paragraph (a):

(i) The "principal community contour" for AM stations is the predicted or measured 5 mV/m groundwave contour computed in accordance with § 73.183 or § 73.186 and for FM stations is the predicted 3.16 mV/m contour computed in accordance with § 73.313.

(ii) The number of stations in a radio market is the number of commercial stations whose principal community contours overlap, in whole or in part, with the principal community contours of the stations in question (i.e., the station for which an authorization is sought and any station in the same service that would be commonly owned whose principal community contour overlaps the principal community contour of that station). In addition, if the area of overlap between the stations in question is overlapped by the principal community contour of a commonly owned station or stations in a different service (AM or FM), the number of stations in the market includes stations whose principal community contours overlap the principal community contours of such commonly owned station or stations in a different service.

(iii) "Time brokerage" is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

(b) *Television contour overlap (duopoly) rule.* No license for a TV broadcast station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the Grade B contour of that station (computed in accordance with § 73.684) and the Grade B contour of any other TV broadcast station directly or indirectly owned, operated, or controlled by the same party.

(c) *One-to-a-market ownership rule.* No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls one

or more such broadcast stations and the grant of such license will result in:

(1) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community of license of an existing or proposed TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the AM station; or

(2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with § 73.313, encompassing the entire community of license of an existing or proposed TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the FM station.

(d) *Daily newspaper cross-ownership rule.* No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or

(2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or

(3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

(e)(1) *National television multiple ownership rule.* No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in TV stations

which have an aggregate national audience reach exceeding thirty-five (35) percent.

(2) For purposes of this paragraph (e):

(i) *National audience reach* means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their ADI market. Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

(ii) *TV broadcast station or TV station* excludes stations which are primarily satellite operations.

(f) This section is not applicable to noncommercial educational FM and noncommercial educational TV stations.

NOTE 1: The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

NOTE 2: In applying the provisions of this section, ownership and other interests in broadcast licensees, cable television systems and daily newspapers will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper will be cognizable;

(b) No minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporate broadcast licensee, cable television system or daily newspaper in which the minority interest is held;

(c) Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust depart-

ments in trust accounts will be considered to have a cognizable interest only if they hold 10% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper, or if any of the officers or directors of the broadcast licensee, cable television system or daily newspaper are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(d) Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1×0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable.]

(e) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee, cable television system or daily newspaper are subject to said trust.

(f) Holders of non-voting stock shall not be attributed an interest in the issuing entity. Holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or

operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assume adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83–46, FCC 85–252 (released June 24, 1985), as modified on reconsideration in the *Memorandum Opinion and Order* in MM Docket No. 83–46, FCC 86–410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

(h) Officers and directors of a broadcast licensee, cable television system or daily newspaper are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, cable television service or newspaper publication, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee, cable television system or daily newspaper shall not be attributed with ownership of these entities by virtue of such status.

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through “passive investors” is equal to or exceeds 10 percent; or

(2) The sum of the interests other than those held by or through “passive investors” is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 10 percent.

NOTE 3: In cases where record and beneficial ownership of voting stock is not identical (e.g., bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for the benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of these rules.

NOTE 4: Paragraphs (a) through (e) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class C stations, to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated or controlled broadcast stations in the same service and if no new encompassment of Communities proscribed in paragraphs (c) and (d) of this section as to commonly owned, operated or controlled broadcast stations or daily newspaper would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience or necessity.) Commonly owned, operated or controlled broadcast stations with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group or entity, except as provided above in this note and by § 73.3555(a). If a commonly owned, operated or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the

station may not be assigned to a single person, group or entity if the newspaper is being simultaneously sold to such single person, group or entity.

NOTE 5: Paragraphs (a) through (e) of this section will not be applied to cases involving television stations that are "satellite" operations. Such cases will be considered in accordance with the analysis set forth in the *Report and Order* in MM Docket No. 87-8, FCC 91-182(released July 8, 1991), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating "satellite" television station, the Grade B contour of which overlaps that of a commonly owned, operated, or controlled "non-satellite" parent television broadcast station, or the Grade A contour of which completely encompasses the community of publication of a commonly owned, operated, or controlled daily newspaper, or the community of license of a commonly owned, operated, or controlled AM or FM broadcast station, or the community of license of which is completely encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station, may subsequently become a "non-satellite" station under the circumstances described in the aforementioned *Report and Order* in MM Docket No. 87-8. However, such commonly owned, operated, or controlled "non-satellite" television stations and AM or FM stations with the aforementioned community encompassment, may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section. Nor shall any application for assignment or transfer concerning such "non-satellite" stations be granted if the assignment or transfer would be to the same person, group or entity to which the commonly owned, operated, or controlled newspaper is proposed to be transferred, except as provided in Note 4 of this section.

NOTE 6: For the purposes of this section a daily newspaper is one which is published four or more days per week, which is in the English language and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

NOTE 7: The Commission will entertain requests to waive the restrictions of paragraph (c) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards:

(1) Those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television mar-

ket and radio licensees in the relevant television metropolitan market;

(2) Those involving "failed" broadcast stations that have not been operated for a substantial period of time, *e.g.*, four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market, and the relevant television metropolitan market for each prospective combination, we will use the most recent *Arbitron Ratings Television ADI Market Guide*. We will determine that number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commission ownership records.

Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87-7, FCC 88-407, released February 23, 1989, and *Memorandum Opinion and Order* in MM Docket No. 87-7, FCC 89-256, released August 4, 1989.

NOTE 8: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535-1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application of the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

NOTE 9: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535-1605 kHz band.

NOTE 10: Authority for joint ownership granted pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary for the date of issuance of a construction permit

§ 73.3556

for an AM radio station in the 1605–1705 kHz band.

[59 FR 49007, Sept. 26, 1994, as amended at 59 FR 62613, Dec. 6, 1994; 61 FR 10690 and 10692, Mar. 15, 1996]

§ 73.3556 Duplication of programming on commonly owned or time brokered stations.

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24 hour period.

(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on September 16, 1992, shall bring that arrangement into compliance within one year thereafter.

[57 FR 18093, Apr. 29, 1992, as amended at 57 FR 42706, Sept. 16, 1992]

EFFECTIVE DATE NOTE: At 57 FR 18093, Apr. 29, 1992, § 73.3556 was added, effective August 1, 1992. At 57 FR 35763, Aug. 11, 1992, the effective date was deferred pending action by the agency. At 57 FR 37888, Aug. 21, 1992, the effective date was further deferred. At 57 FR 42706, Sept. 16, 1992, paragraph (a) was revised and paragraph (c) was added, effective September 16, 1992. The agency will publish a notice of the effective date of paragraph (b) in the FEDERAL REGISTER at a later date.

§ 73.3561 Staff consideration of applications requiring Commission action.

Upon acceptance of an application, the complete file is reviewed by the staff and, except where the application is acted upon by the staff pursuant to delegation of authority, a report containing the recommendations of the staff and any other documents required

47 CFR Ch. I (10–1–98 Edition)

is prepared and placed on the Commission's agenda.

[44 FR 38499, July 2, 1979]

§ 73.3562 Staff consideration of applications not requiring action by the Commission.

Those applications which do not require action by the Commission but which, pursuant to the delegations of authority set forth in subpart B of part 0, may be acted upon by the Chief, Mass Media Bureau, are forwarded to the Mass Media Bureau for necessary action. If the application is granted, the formal authorization is issued. In any case where it is recommended that the application be set for hearing, where a novel question of policy is presented, or where the Chief, Mass Media Bureau desires instructions from the Commission, the matter is placed on the Commission agenda.

[49 FR 14509, Apr. 12, 1984]

§ 73.3564 Acceptance of applications.

(a)(1) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for applications for minor modifications of facilities in the non-reserved FM band, as defined in § 73.3573(a)(2), long form applications subject to the provisions of § 73.5005 found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, a deficiency letter will be issued and the applicant will be required to supply the missing or corrective information. Applications that are not substantially complete will not be considered and will be returned to the applicant.

(2) In the case of minor modifications of facilities in the non-reserved FM band, applications will be placed on public notice if they meet the following two-tiered minimum filing requirement as initially filed in first come/first served proceedings:

- (i) The application must include:
 - (A) Applicant's name and address,
 - (B) Applicant's original signature,
 - (C) Principal community,